

## **IX.5 Provisioning of Network Elements.**

IX.5.1 Ameritech shall provide Requesting Carrier unbundled Network Elements as set forth on **Schedule 9.5**. If Requesting Carrier submits "manual orders" for unbundled Network Elements in lieu of using any available electronic interfaces to submit such orders, the Parties agree that the terms and conditions set forth in Ameritech's unbundled Network Elements tariff(s) shall apply to Requesting Carrier's submission of such "manual orders" or, if no such terms or conditions are then set forth in the unbundled Network Elements tariff(s) or if such tariff(s) is not then in effect, the Parties shall apply the terms and conditions set forth in the Implementation Plan that address such manual orders.

IX.5.2 Ameritech shall provide Requesting Carrier access to the functionalities for Ameritech's pre-ordering, ordering, provisioning, maintenance and repair and billing functions of the Operations Support Systems functions that relate to the Network Elements that Requesting Carrier purchases hereunder. Access to such functionalities for the Operations Support Systems functions shall be as provided in **Schedule 9.2.6** and the Implementation Plan.

IX.5.3 Prior to submitting an order for access to a Network Element which replaces, in whole or in part, a service offered by Ameritech or any other telecommunications provider for which Ameritech changes a primary Local Exchange Carrier ("PLEC"), Requesting Carrier shall comply with the requirements of **Section 10.11.1**.

IX.5.4 Except as specifically provided in this Agreement or pursuant to an order of a court or commission of competent jurisdiction, Ameritech may not initiate any disconnect, suspension or termination of any Requesting Carrier ordered Network Element unless directed to do so by transmission of a Service Order or Ameritech's receipt of proper authorization to change such Customer's PLEC to a carrier other than Requesting Carrier.

9.5.5 If any dispute should occur concerning the selection of a PLEC by a Customer of a Party that is served by an unbundled Network Element, the Parties shall follow the procedures described on **Schedule 10.11.2**.

9.5.6 When Ameritech receives an order for access to an unbundled Network Element or Elements from Requesting Carrier for the provision of local exchange Telecommunications Services for Requesting Carrier's Customer, and that Customer is currently provided local exchange Telecommunications Services by another carrier ("**Carrier of Record**") Ameritech shall notify such Carrier of Record of such order in the same manner as described in **Section 10.11.1**. It shall then be the responsibility of the Carrier of Record and Requesting Carrier to resolve any issues related to that Customer. Requesting Carrier agrees to indemnify and hold Ameritech harmless against any and all losses that may result from Ameritech acting under this **Section 9.5.6**.

**IX.6 Availability of Additional Network Elements.** Any request by Requesting Carrier for access to a Network Element that is not otherwise provided by the terms of this Agreement at the time of such request shall be made pursuant to a Bona Fide Request and shall be subject to the payment by Requesting Carrier of all applicable costs in accordance with Section 252(d)(1) of the Act to process such request and to develop, install and provide access to such Network Element.

**IX.7 Pricing of Unbundled Network Elements.**

IX.7.1 Ameritech shall charge Requesting Carrier the non-recurring and monthly recurring rates for unbundled Network Elements (including the monthly recurring rates for these specific Network Elements, service coordination fee, and Cross-Connect charges) as specified at Item V of the Pricing Schedule. If Requesting Carrier requests and Ameritech agrees to provide services in excess of or not otherwise contemplated by this Agreement, Requesting Carrier shall pay Ameritech for any additional charges to perform such services.

9.7.2 Consistent with the Act and as prescribed by the FCC and the Commission, Ameritech and Requesting Carrier shall be entitled to interstate and intrastate access charges related to Requesting Carrier's purchase of access to unbundled Network Elements.

9.7.3 If Requesting Carrier submits to Ameritech manual orders for unbundled Network Elements, each manual order shall be subject to a non-recurring charge as set forth in the applicable tariff(s), or if no charge(s) are contained therein, at rates that compensate Ameritech for its costs in accordance with Section 252(d) of the Act to process such manual orders.

**IX.8 Billing.** Ameritech shall bill Requesting Carrier for access to unbundled Network Elements pursuant to the requirements of Article XXVII to this Agreement.

**IX.9 Maintenance of Unbundled Network Elements.**

9.9.1 Ameritech shall provide maintenance of Loops as set forth in Schedule 10.13.

9.9.2 If (i) Requesting Carrier reports to Ameritech a suspected failure of a Network Element, (ii) Requesting Carrier requests a dispatch, (iii) Ameritech dispatches a technician, and (iv) such trouble was not caused by Ameritech's facilities or equipment, then Requesting Carrier shall pay Ameritech a trip charge and time charges as set forth at Item V of the Pricing Schedule.

## IX.10 Standards of Performance.

IX.10.1 Ameritech shall provide to Requesting Carrier access to unbundled Network Elements (i) in accordance with **Section 9.4** as determined by this **Section 9.10** and (ii) as required by the Commission (collectively, the “**Ameritech Network Element Performance Benchmarks**”).

IX.10.2 To determine Ameritech's compliance with the Ameritech Network Element Performance Benchmarks, Ameritech shall maintain records of the specific criteria listed in **Schedule 9.10** which criteria are the criteria that Ameritech currently measures to evaluate its provision of unbundled Network Elements (each, a “**Network Element Performance Activity**”). Ameritech shall provide records relating to the access to unbundled Network Elements Ameritech provides to itself, its subsidiaries and Affiliates (the “**Ameritech NE Records**”) and parallel records of the access to unbundled Network Elements Ameritech provides to (x) Requesting Carrier (the “**Requesting Carrier NE Records**”) and (y) other LECs in the aggregate (the “**Other LEC NE Records**”), in each case segregated on the basis of whether the unbundled Network Elements were ordered as provided in **Schedules 9.2.6** and **9.5** or through manual orders. The criteria will be revised in accordance with the procedures set forth in the Implementation Plan if Ameritech no longer measures a criterion in assessing its performance in providing Network Elements or begins measuring additional criteria.

IX.10.3 Subject to the last sentence of this **Section 9.10.3**, Ameritech shall provide to Requesting Carrier for each Reporting Period, by the twenty-second (22nd) day of the following month, in a self-reporting format, the applicable Ameritech NE Records, the Requesting Carrier NE Records and the Other LEC NE Records so that the Parties can determine Ameritech's compliance with the Ameritech Network Element Performance Benchmarks. If (i) Ameritech fails to comply with an Ameritech Network Element Performance Benchmark with respect to a Network Element Performance Activity for a Reporting Period, (ii) the sample size of the Network Element Performance Activity measured for such Reporting Period is statistically valid and (iii) the amount by which the applicable Ameritech Network Element Performance Activity deviates from the corresponding Network Element Performance Benchmark is statistically significant, then Ameritech shall have committed an “**NE Specified Performance Breach**”. Notwithstanding anything to the contrary in this **Section 9.10.3**, the Parties acknowledge that (x) the Other LEC NE Records shall be provided to Requesting Carrier on an aggregate basis and (y) such Other LEC NE Records shall be provided to Requesting Carrier in a manner that preserves the confidentiality of each other LEC and any of such LEC's proprietary information (including CPNI). Notwithstanding anything to the contrary in this **Section 9.10**, Ameritech shall not be required to provide Requesting Carrier any records as set forth in this **Section 9.10.3** if Requesting Carrier is leasing less than one thousand (1000) unbundled Network Elements from Ameritech for a given Reporting Period.

IX.10.4 In no event shall Ameritech be deemed to have committed a Network Element Specified Performance Breach if Ameritech's failure to meet or exceed a Network Element Performance Activity is caused by a Delaying Event. If a Delaying Event (i) prevents Ameritech

from performing a certain function or action that affects a Network Element Performance Activity, then such occurrence shall be excluded from the calculation of such Network Element Performance Activity and the determination of Ameritech's compliance with the applicable Ameritech Network Element Performance Benchmark or (ii) only suspends Ameritech's ability to timely perform such Network Element Performance Activity, then the applicable time frame in which Ameritech's compliance with the Ameritech Network Element Performance Benchmark is measured shall be extended on a like-time basis equal to the duration of such Delaying Event.

IX.10.5 Upon the occurrence of a Network Element Specified Performance Breach by Ameritech, Requesting Carrier may forego the dispute escalation procedures set forth in **Section 28.3** and seek any relief it is entitled to under Applicable Law.

IX.10.6 Requesting Carrier shall also be entitled to any Credit Allowances pursuant to the same terms and conditions that Ameritech offers Credit Allowances to its Customers.

## **ARTICLE X**

### **RESALE AT WHOLESALE RATES--SECTION 251(c)(4)**

**X.1 Telecommunications Services Available for Resale at Wholesale Rates.** Commencing on the Service Start Date, upon the request of Requesting Carrier and subject to the terms, conditions and limitations set forth in this Agreement, Ameritech will make available to Requesting Carrier for resale at wholesale rates those Telecommunications Services that Ameritech provides at retail to subscribers who are not Telecommunications Carriers, as required by Section 251(c)(4) of the Act (the "**Resale Services**"). The Resale Services available to Requesting Carrier and the rates for such Resale Services are set forth on **Schedule 10.1**.

**X.2 Other Services.** Ameritech may, at its sole discretion, make available to Requesting Carrier under this Agreement services other than Telecommunications Services (e.g., voicemail) for resale at rates, terms and conditions agreed upon by the Parties.

**X.3 Limitations on Availability of Resale Services.**

The following limitations shall apply to Resale Services:

X.3.1 The Telecommunications Services that Ameritech offers to existing retail subscribers, but not to new subscribers ("**Grandfathered Services**") are identified in the Resale Tariff, as such Resale Tariff may be revised or supplemented from time to time to include those additional services that Ameritech may, at its discretion and to the extent permitted by Applicable Law, classify as Grandfathered Services. Ameritech agrees to make Grandfathered Services available to Requesting Carrier for resale, subject to the terms of Section 10.3.2, to those Customers that (i) subscribed to the applicable Telecommunications Service (whether through Ameritech or Requesting Carrier as the provider) at the time such service was classified by Ameritech as a Grandfathered Service and (ii) continue to subscribe to such Grandfathered Service at the time of such Customer's selection of Requesting Carrier as its primary Local Exchange Carrier. Grandfathered Services shall be made available to Requesting Carrier at wholesale rates determined in accordance with the Act. To the extent that Ameritech is unable to provide wholesale systems support and billing within the first ninety (90) days from the date each Requesting Carrier Resale Service Customer is provided such Grandfathered Service, Ameritech shall retroactively apply such wholesale rate as a credit to Requesting Carrier and will bill such service to Requesting Carrier from its retail billing systems.

X.3.2 The Telecommunication Services that Ameritech currently intends to discontinue offering to any retail subscriber ("**Sunsetted Services**") are identified in the Resale Tariff, as such Resale Tariff may be revised or supplemented from time to time to include those additional Telecommunications Services that Ameritech may, at its discretion and to the extent permitted by Applicable Law, classify as Sunsetted Services. Ameritech agrees to make Sunsetted Services available to Requesting Carrier for resale to Requesting Carrier's Customers who are subscribers to the Sunsetted Service either from Ameritech or Requesting Carrier at the time so classified (subject to the provisions of Section 10.3.1 if such Sunsetted Service was classified as a Grandfathered Service prior to its classification as a Sunsetted Service) until the date such service is discontinued.

X.3.3 Each Party acknowledges that Resale Services shall be available to Requesting Carrier on the same basis (including the availability of features and facilities) as offered by Ameritech to itself or to any subsidiary, Affiliate, or any other person to which Ameritech directly provides the Resale Services, including Ameritech's retail Customers and other resellers of Ameritech's Telecommunications Services.

**X.4 Additional Charges for Resale Services.** In addition to the rates set forth at Item VI of the Pricing Schedule, Requesting Carrier shall pay Ameritech (i) for any applicable charges or fees, if any, incident to the establishment or provision of the Resale Services requested by Requesting Carrier, including channel charges, initial non-recurring charges and construction charges, in each case as authorized and/or approved by the Commission and (ii) the applicable non-discounted end user common line charge as set forth in F.C.C. No. 2, Section 4. If the provision of any Resale Service requires construction, Requesting Carrier shall pay to Ameritech any applicable special construction charges. If special construction is required, the Parties shall mutually agree on

the nature and manner of such special construction, the applicable charges thereto and the negotiated interval(s) that will apply to the provisioning of such Resale Service(s) in lieu of the standard intervals set forth on Schedule 10.9.2. The wholesale discount set forth at Item VI of the Pricing Schedule is not applicable to taxes or other pass-through charges, including the charges described in this Section 10.4.

## **X.5 Restrictions on Resale Services.**

X.5.1 Requesting Carrier may not offer Resale Services that are made available only to residential Customers or to a limited class of residential Customers to classes of Customers that are not eligible to subscribe to such services from Ameritech.

X.5.2 Ameritech shall not be required to provide to Requesting Carrier a Resale Service at a promotional rate that Ameritech offers at retail, nor shall Ameritech be required to provide a wholesale discount off a promotional rate if:

- (a) Such promotions involve rates that will be in effect for no more than ninety (90) days; and
- (b) Such promotional offerings are not used to evade the wholesale rate obligation; for example, by making available a sequential series of ninety (90) day promotional rates.

X.5.3 Nothing in this Agreement shall require Ameritech to provide to Requesting Carrier promotional service elements that are not Telecommunications Services (i.e., customer-premises equipment).

X.5.4 Requesting Carrier shall not utilize Resale Services to avoid applicable access charges.

X.5.5 As provided in the Act, Requesting Carrier may not purchase Resale Services unless such services are resold to a person other than Requesting Carrier, its subsidiaries and Affiliates.

X.5.6 Resale Services can only be used in the same manner as specified in Ameritech's retail tariffs.

X.5.7 Ameritech may impose additional restrictions on Requesting Carrier's purchase and sale of Resale Services only as permitted by the Act, the Commission and the FCC.

**X.6 New Resale Services; Changes in Provision of Resale Services.** Ameritech shall, via tariff filings, notify Requesting Carrier of any changes in the terms and conditions under which Ameritech offers Resale Services, including the introduction of any new features, functions or

services. Notwithstanding anything to the contrary contained herein, any notice or information provided by Ameritech pursuant to this **Section 10.6** (other than in a publicly filed tariff) shall be deemed "**Proprietary Information**" and subject to the terms and conditions of **Article XX**.

**X.7 Operations Support Systems Functions.** Ameritech shall provide Requesting Carrier nondiscriminatory access to, and Requesting Carrier shall use, Ameritech's Operations Support Systems functions for pre-ordering, ordering, provisioning, maintenance, repair and billing.

**X.8 Nondiscriminatory Provision of Resale Services.**

X.8.1 Resale Services made available by Ameritech for resale hereunder and Operations Support Systems functions for ordering, provisioning, repair, maintenance and billing shall be equal in quality to that provided by Ameritech to itself or to any subsidiary, Affiliate or any other person to which Ameritech directly provides the Resale Service, including Ameritech's retail Customers.

X.8.2 Consistent with Requesting Carrier's forecasted volumes and subject to the terms and conditions of **Section 19.5**, Ameritech shall provision Resale Services with the same timeliness that such Resale Services are provisioned to Ameritech's subsidiaries, Affiliates, or other persons to whom Ameritech directly provides the Resale Service, including Ameritech's retail Customers; provided that if Requesting Carrier submits Non-Electronic Orders for Resale Services pursuant to **Section 10.13.2(b)**, Ameritech shall provision such orders as provided in **Section 10.13.2(b)(iii)**.

**X.9 Standards of Performance.**

X.9.1 Ameritech shall provide Resale Services to Requesting Carrier (i) in accordance with **Section 10.8** as determined by this **Section 10.9**, but subject to **Section 10.4** and (ii) as required by the Commission (collectively, the "**Resale Performance Benchmarks**").

X.9.2 To determine Ameritech's compliance with the Resale Performance Benchmarks, Ameritech shall maintain records of specific criteria listed on **Schedule 10.9.2** (each, a "**Resale Performance Activity**") relating to Resale Services it provides to itself and to its subsidiaries, Affiliates and Ameritech's retail Customers (the "**Ameritech Resale Records**") and parallel records of the Resale Services provided to (i) Requesting Carrier (the "**Requesting Carrier Records**") and (ii) on an aggregate basis, resellers of Telecommunications Services other than Requesting Carrier (the "**Other Reseller Records**"), in each case segregated on the basis of whether the Resale Services were ordered through the Provisioning El or by Non-Electronic Orders. The Resale Performance Activities will be revised in accordance with the procedures set forth in the Implementation Plan if Ameritech (x) no longer measures a Resale Performance Activity in assessing its performance in providing such Resale Service to Ameritech's retail Customers or (y) begins measuring additional criteria to assess such performance.

X.9.3 Subject to Section 10.9.2 and the last sentence of this Section 10.9.3, Ameritech shall provide to Requesting Carrier for each Reporting Period, by the twenty-second (22nd) day of the following month, in a self-reporting format, the applicable Ameritech Resale Records, the Requesting Carrier Resale Records and the Other Reseller Records so that the Parties can determine Ameritech's compliance with the Resale Performance Benchmarks. If (i) Ameritech fails to comply with a Resale Performance Benchmark with respect to a Resale Performance Activity for a Reporting Period, (ii) the sample size of the Resale Performance Activity measured for such Reporting Period is statistically valid, and (iii) the amount by which the applicable Resale Performance Activity deviates from the corresponding Resale Performance Benchmark is statistically significant, then Ameritech shall have committed a "**Resale Specified Performance Breach.**" Notwithstanding anything to the contrary in this Section 10.9.3, the Parties acknowledge that the Other Reseller Records shall be provided to Requesting Carrier (x) on an aggregate basis and (y) in a manner that preserves the confidentiality of each other reseller and any of such reseller's proprietary information (including CPNI). Notwithstanding anything to the contrary in this Section 10.9, Ameritech shall not be required to provide Requesting Carrier any records as set forth in this Section 10.9.3 if Requesting Carrier is reselling less than one thousand (1000) resold lines in a given Reporting Period.

X.9.4 In no event shall Ameritech be deemed to have committed a Resale Specified Performance Breach if Ameritech's failure to meet or exceed a Resale Performance Activity is caused by a Delaying Event. If a Delaying Event (i) prevents Ameritech from performing a certain function or action that affects a Resale Performance Activity, then such occurrence shall be excluded from the calculation of such Resale Performance Activity and the determination of Ameritech's compliance with the applicable Resale Performance Benchmark or (ii) only suspends Ameritech's ability to timely perform such Resale Performance Activity, then the applicable time frame in which Ameritech's compliance with the Resale Performance Benchmark is measured shall be extended on a like-time basis equal to the duration of such Delaying Event.

X.9.5 Upon the occurrence of a Resale Specified Performance Breach by Ameritech, Requesting Carrier may elect one of the following two remedies:

- (a) Forego the dispute escalation procedures set forth in Section 28.3 and seek any relief it is entitled to under Applicable Law; or
- (b) Ameritech shall pay to Requesting Carrier as liquidated damages any amounts that Requesting Carrier is entitled to receive under then existing Commission procedures relating to the failure by Ameritech to comply with the Commission performance standards.

X.9.6 Requesting Carrier shall also be entitled to any Credit Allowances pursuant to the same terms and conditions that Ameritech offers Credit Allowances to its retail Customers.



## **X.10 Branding.**

X.10.1 If Operator Call Completion or Directory Assistance Service is a feature of an offered Resale Service, Ameritech shall rebrand such features of such offered Resale Service as requested by Requesting Carrier for Requesting Carrier's Customers, unless Ameritech lacks the technical capability to comply with such rebranding request, as approved by the Commission.

X.10.2 Ameritech shall make available to Requesting Carrier, upon Requesting Carrier's request, the ability to route:

- (i) Local Directory Assistance calls dialed by Requesting Carrier's Customers directly to Requesting Carrier Directory Assistance Services platform, to the extent such routing is technically feasible; and
- (ii) Local Operator Services calls (0+, 0-) dialed by Requesting Carrier Customers directly to the Requesting Carrier Local Operator Services platform. Such traffic shall be routed over trunk groups between Ameritech End Offices and the Requesting Carrier Local Operator Services platform, using standard Operator Services dialing protocols of 0+ or 0-, to the extent such routing is technically feasible.

The routing capabilities described above will be implemented according to the Implementation Plan. To the extent technically feasible, all direct routing capabilities described in this **Section 10.10.2** shall permit Requesting Carrier Customers to dial the same telephone numbers for Requesting Carrier Directory Assistance and Local Operator Service that similarly situated Ameritech Customers dial for reaching equivalent Ameritech services.

X.10.3 Notwithstanding anything to the contrary in this Agreement, the Parties agree that Ameritech shall have no obligation to unbrand or rebrand its service technicians or trucks, any customer premises equipment, any other customer-owned facilities or its outside plant.

X.10.4 Requesting Carrier shall not, without Ameritech's prior written consent, offer any Resale Service to any Customer under any brand name of Ameritech, its subsidiaries or its Affiliates, nor shall Requesting Carrier state or imply that there is any joint business association or any similar arrangement with Ameritech in the provision of Resale Service to Requesting Carrier's Customers, except to the extent Requesting Carrier deems it necessary to advise its Customers that Ameritech's personnel will perform work on behalf of Requesting Carrier under this Agreement or that some facilities used in provisioning service are owned and maintained by Ameritech; provided, however, that Requesting Carrier shall make no disparaging statements about Ameritech or its facilities, products or services.

X.10.5 In those instances where Requesting Carrier requires Ameritech personnel to interface directly with Requesting Carrier Customers, either orally in person or by telephone, or in

writing, such personnel shall identify themselves as Ameritech's employees representing Requesting Carrier.

X.10.6 Any "no access" cards and time and materials invoices furnished during service calls by Ameritech personnel to Requesting Carrier Customers shall be available to Requesting Carrier for review and shall be provided to Requesting Carrier Customers in an unbranded form.

X.10.7 In no event shall Ameritech personnel acting on behalf of Requesting Carrier pursuant to this Agreement provide information to any existing Requesting Carrier Customer about Ameritech products or services.

X.10.8 Requesting Carrier shall pay Ameritech's costs, if any, pursuant to the pricing standard in Section 252(d)(1) of the Act and in such amounts or levels as determined by the Commission for providing any requested branding or routing under this **Section 10.10**.

#### **X.11 Primary Local Exchange and Interexchange Carrier Selections.**

X.11.1 The Parties shall apply all of the principles set forth in the Act and Applicable Law, including 47 C.F.R. § 64.1100, to the process for Customer selection of a PLEC. Ameritech shall not require a disconnect order from a Requesting Carrier Customer, or another LEC, in order to process a Requesting Carrier order for Resale Service for a Requesting Carrier Customer. Ameritech shall advise Requesting Carrier whenever a Requesting Carrier Customer has selected another PLEC by giving notice to Requesting Carrier via the Provisioning EI within twenty-four (24) hours of the change being completed by Ameritech. Until the FCC or the Commission adopts final rules and procedures regarding a Customer's selection of a PLEC, each Party shall deliver to the other Party a representation of authorization in the form set forth on **Schedule 10.11.1** that applies to all orders submitted by a Party under this Agreement that require a PLEC change. Such representation of authorization shall be delivered to the other Party prior to the first order submitted by a Party. Each Party shall retain on file all applicable Letters and Documentation of Authorization (each as defined in **Schedule 10.11.1**) relating to its Customer's selection of such Party as its PLEC, which documentation shall be available for inspection by the other Party at its request during normal business hours.

X.11.2 If any dispute should occur concerning the selection of a PLEC by a Customer of a Party, the following procedures shall apply:

- (a) If a Customer of either Party or a customer of another carrier denies authorizing a change in his or her PLEC selection to a different LEC ("**Unauthorized Switching**"), Ameritech shall switch that customer back to the authorized PLEC in accordance with the terms of **Schedule 10.11.2**. However, in the case of unauthorized changes of Requesting Carrier Customers to Ameritech, Ameritech shall also have the duties enumerated on

Schedule 10.11.2 and will pay to Requesting Carrier the Unauthorized Switching charge described on Schedule 10.11.2.

- (b) If Ameritech reports or otherwise provides information on unauthorized PLEC changes to the FCC, the Commission or any other governmental entity, Ameritech agrees to report on Requesting Carrier unauthorized PLEC changes separately from unauthorized presubscribed interexchange carrier ("PIC") changes.

X.11.3 When Ameritech receives an order for Resale Service from Requesting Carrier for Requesting Carrier's Customer, and Ameritech currently provides resale local exchange Telecommunications Services to another carrier ("**Carrier of Record**") for the same Customer, Ameritech shall notify such Carrier of Record of such order in the same manner as described in Section 10.11.1. It shall then be the responsibility of the Carrier of Record and Requesting Carrier to resolve any issues related to that Customer. Requesting Carrier agrees to indemnify and hold Ameritech harmless against any and all Losses that may result from Ameritech acting under this Section 10.11.3.

X.11.4 When Ameritech is notified by Requesting Carrier that a Requesting Carrier Customer has changed its PIC from one IXC to another IXC, Ameritech shall provision the PIC-only change.

10.11.5 (a) From the Effective Date until thirty (30) Business Days after Requesting Carrier makes the election described in subsection (b), when Ameritech is notified through the Customer Access Record Exchange (CARE) system that a Requesting Carrier Customer has changed its PIC from one IXC to another IXC, Ameritech shall provision the PIC-only change.

(b) At some future date, Ameritech will provide PLECs the option to have Ameritech reject all CARE-Initiated requests that Ameritech receives to change the PIC of a PLEC's customer. Ameritech will provide Requesting Carrier prior written notice of the availability of this option. Within ten (10) Business Days after Ameritech provides notice of the availability of this option to Requesting Carrier (the "**Election Period**"), Requesting Carrier shall notify Ameritech in writing whether it elects this option, which option shall then apply to all Requesting Carrier Resale Service orders received thirty (30) Business Days after Ameritech receives Requesting Carrier's written notice of election. If Requesting Carrier fails to make the election described in this subsection (b) within the Election Period, Ameritech shall provision CARE-Initiated PIC Changes under subsection (a), and not under this subsection (b).

## **X.12 Functionality Required To Support Resale Service.**

X.12.1 Directory Listing Requirements. Ameritech shall make available to Requesting Carrier for Requesting Carrier Customers directory listings in accordance with the provisions of Article XV.

X.12.2 LEC - Assigned Telephone Calling Card Numbers. Effective as of the date of a Customer's subscription to Requesting Carrier's service, Ameritech will block the LEC-assigned telephone line calling card number (including area code) ("**TLN**") from the Line Information Database ("**LIDB**").

X.12.3 9-1-1 Services. Ameritech shall provide to Requesting Carrier, for Requesting Carrier Customers, 9-1-1 call routing to the appropriate PSAP. Ameritech shall provide and validate Requesting Carrier Customer information to the PSAP. Ameritech shall use its service order process to update and maintain, on the same schedule that it uses for its retail Customers, the Requesting Carrier Customer service information in the ALI/DMS (Automatic Location Identification/Data Management System) used to support 9-1-1 services. Any 9-1-1 surcharges assessed by a municipality on Resale Services provided to Requesting Carrier Customers shall be included by Ameritech on Requesting Carrier's invoice and Requesting Carrier agrees to pay Ameritech all such surcharges. Ameritech shall then be responsible for submitting to the applicable municipalities all surcharges collected from Requesting Carrier.

X.12.4 Special Services. If Ameritech makes a notation on the Customer Service Records (CSR) of Customers who qualify for certain services available to physically challenged individuals (e.g., special discounts) ("**Special Services**"), Ameritech shall provide such data to Requesting Carrier on the CSR made available to Ameritech for its Customers. For usage by a Requesting Carrier Customer of a Telephone Relay Service, Ameritech will provide Requesting Carrier with all billing information furnished to Ameritech by the provider of the Telephone Relay Service.

X.12.5 Law Enforcement Interfaces. Interfaces with law enforcement agencies and other security matters shall be conducted as specified in **Schedule 10.12.5**.

### **X.13 Service Functions.**

#### **X.13.1 Point of Contact for Requesting Carrier Customer.**

- (a) **Primary Point of Contact**. Except as otherwise provided in this Agreement, Requesting Carrier shall be the primary point of contact for all Requesting Carrier Customers.
- (b) **Customer Contact Employee Training**. Ameritech shall provide training for all of its employees who may communicate, either by telephone or face-to-face, with Requesting Carrier Customers to assure that the requirements of this Agreement are met. Furthermore, the same quality standards that Ameritech requires of its employees when contacting an Ameritech Customer (e.g., honesty, respect and courtesy) shall apply when its employees are in contact with Requesting Carrier Customers.

- (c) Requests for Service Changes. When Ameritech provides installation on behalf of Requesting Carrier, Ameritech's representatives shall instruct a Requesting Carrier Customer to contact Requesting Carrier if such Customer requests a service change at the time of installation.

X.13.2 Operations Support Systems Functions — Provisioning.

- (a) Provisioning EI for Pre-Ordering, Ordering and Provisioning. Ameritech shall provide, and Requesting Carrier shall use, the electronic interface described in Ameritech's Electronic Service Ordering Guide, Version 7.0 (the "**Provisioning EI**") for the transfer and receipt of data necessary to perform each of the pre-ordering, ordering and provisioning functions associated with Requesting Carrier's order of Resale Services. The Provisioning EI will be administered through a gateway that will serve as a single point of contact for the transmission of such data and will provide the functionality described in **Schedule 10.13.2.**
- (b) Non-Electronic Orders. On or before the Service Start Date, Requesting Carrier shall establish the Provisioning EI so that it may submit all orders for Resale Services to Ameritech through such Provisioning EI. If Requesting Carrier fails to establish the Provisioning EI so that it is unable to submit "live" orders through the Provisioning EI by the Service Start Date, the Parties agree that the terms and conditions set forth in the Resale Tariff (including any forecasting requirements associated therewith that are inconsistent with any requirements contained in this Agreement) shall apply to Requesting Carrier's submission of Non-Electronic Orders or, if no such terms or conditions are then set forth in the Resale Tariff or if the Resale Tariff is not then in effect, the following terms and conditions set forth in this **Section 10.13.2(b)** shall apply to such submission of Non-Electronic Orders.
- (i) In addition to, and not in lieu of **Section 19.5.2**, not less than forty-five (45) days prior to the first Non-Electronic Order submitted by Requesting Carrier hereunder, and every calendar month thereafter, Requesting Carrier shall provide to Ameritech a three (3) month rolling forecast of the number of daily Non-Electronic Orders that Requesting Carrier shall submit to Ameritech Monday through Friday (excluding holidays on which the Service Center is closed) for a given calendar month (the "**Non-Electronic Forecast**"). The Non-Electronic Forecast shall be developed using standard commercial and industry practices and procedures, including daily demand data updated to reflect actual demand. The Non-Electronic Forecast shall

- be submitted to Ameritech in a standard format provided by Ameritech.
- (ii) Requesting Carrier may submit to Ameritech Monday through Friday (excluding holidays on which the Service Center is closed) up to the number of Non-Electronic Orders forecasted for that given day. Each Non-Electronic Order shall be submitted in a standard, legible typewritten format provided by Ameritech and shall be submitted to Ameritech through the use of a dedicated facsimile number to be identified in the Implementation Plan.
  - (iii) Ameritech shall process Requesting Carrier's Non-Electronic Orders on a first-in, first-out basis with respect to all Non-Electronic Orders received by Ameritech; provided, that forecasted Non-Electronic Orders will receive first priority and any orders submitted that exceed the Non-Electronic Forecast for a given day will receive second priority.
  - (iv) In addition to the non-recurring charges described in Section 10.4, each Non-Electronic Order submitted by Requesting Carrier to Ameritech shall be subject to a non-recurring charge of (1) \$24.19 per order for residential Resale Services and (2) \$17.17 per order for business Resale Services (which charges represent the combined service order charge and Non-Electronic Order charge) and, if applicable, any additional charges authorized by the Commission that compensate Ameritech for its costs in accordance with Section 252(d) of the Act to process such Non-Electronic Orders.
  - (v) Requesting Carrier shall provide to Ameritech not less than ninety (90) days notice prior to Requesting Carrier's first order for "live" Resale Services through the Provisioning EI.
- (c) Pre-Ordering Functions. Requesting Carrier shall also use the Provisioning EI to access all of the other Operations Support Systems functions that are available through such Provisioning EI and which are described on Schedule 10.13.2 and/or made available to Requesting Carrier after the Effective Date. Any request by Requesting Carrier to Ameritech for such other Operations Support Systems functions that are directed to the Service Center through a means other than the Provisioning EI shall be subject to additional non-recurring charges and restrictions.
- (d) Service Ordering and Provisioning. Service Orders will be placed by Requesting Carrier and provisioned by Ameritech in accordance with the

procedures described in **Section 10.7**. Any Service Order activity resulting in PLEC changes will comply with the requirements of 47 C.F.R. § 64.1100 and **Section 10.11.1**.

- (e) **Status Reports**. After receipt and acceptance of a Service Order, Ameritech shall provide Requesting Carrier with service status notices on an exception basis.
- (f) **Non-Interruption of Service**. Except as specifically provided in this Agreement or pursuant to an order of a court or commission of competent jurisdiction, Ameritech may not initiate any disconnect, suspension or termination of a Requesting Carrier Customer's Resale Service, unless directed to do so by Requesting Carrier by transmission of a Service Order or Ameritech's receipt of proper authorization to change such Customer's PLEC to a carrier other than Requesting Carrier.

#### X.13.3 Operations Support Systems Functions — Maintenance.

- (a) **Electronic Interface for Maintenance and Repair**. Ameritech will provide an electronic interface (the "Maintenance EI") for the transfer and receipt of data necessary to perform the maintenance and repair functions (e.g., trouble receipt and trouble status). This interface will be administered through a gateway that will serve as a single point of contact for the transmission of such data.
- (b) **Maintenance**. Maintenance will be provided by Ameritech as set forth in the Implementation Plan and in accordance with the requirements set forth in **Sections 10.7 and 10.8** and **Schedule 10.13**.
- (c) **Pre-Screening**. Prior to referring troubles to Ameritech, Requesting Carrier shall complete the same prescreening guidelines with its customers that Ameritech utilizes with its customers; copies of which shall be provided by Ameritech to Requesting Carrier upon Requesting Carrier's request.

#### X.14 Responsibilities of Requesting Carrier.

X.14.1 Each Party shall be responsible for providing to its Customers and to the other Party a telephone number or numbers that its Customers can use to contact the first Party in the event of a repair request. If a Customer contacts the Party that is not its local provider with regard to a repair request, such Party shall inform such Customer that they should call their local provider and may provide to the Customer such local provider's contact number.

X.14.2 If Ameritech maintains an Emergency Telephone Number Service database, Requesting Carrier shall provide Ameritech with accurate and complete information regarding Requesting Carrier's Customers in a method reasonably prescribed by Ameritech to allow Ameritech to update such Emergency Telephone Number Service database.

X.14.3 Prior to the Service Start Date, Requesting Carrier shall have received and communicated to Ameritech its Carrier Identification Code, its Access Carrier Name Abbreviation or Interexchange Access Customer Code and Operating Company Number.

X.14.4 Notwithstanding anything to the contrary in this Agreement, Requesting Carrier is solely responsible for the payment of charges for all Resale Services furnished under this Agreement.

X.14.5 Requesting Carrier shall be responsible for certifying Customers and establishing on a per line basis Blocking of Caller ID for Resale Services in accordance with Applicable Law.

**X.15 Responsibilities of Ameritech.** Ameritech shall provide access to the following services where Ameritech is the underlying 9-1-1 service provider:

- (i) Universal Emergency Number service, a telephone exchange communication service which includes lines and equipment necessary for answering, transferring and dispatching public emergency telephone calls originated by persons within the telephone Central Office areas arranged for 9-1-1 calling.
- (ii) Basic 9-1-1 service (where available) provides for routing all 9-1-1 calls originated by Customers having telephone numbers beginning with a given Central Office prefix code or codes to a single PSAP equipped to receive those calls.
- (iii) Enhanced 9-1-1 ("E9-1-1") service, which provides additional features to Basic 9-1-1 service, such as selective routing of 9-1-1 calls to a specific PSAP which is selected from the various PSAPs serving Customers within that Central Office area.

Both Requesting Carrier and its Customers purchasing Resale Service under this Agreement are not charged for calls to the 9-1-1 number, except as provided in any applicable tariff or pursuant to Applicable Law.



modification, may recover their proportionate share of the depreciated value of such modifications from parties subsequently seeking Attachment to the modified structure.

**XVI.4 Installation and Maintenance Responsibility.** Requesting Carrier shall, at its own expense, install and maintain its Attachments in a safe condition and in thorough repair so as not to conflict with the use of the Structure by Ameritech or by other attaching parties. Work performed by Requesting Carrier on, in or about Ameritech's Structures shall be performed by properly trained, competent workmen skilled in the trade. Ameritech will specify the location on the Structure where Requesting Carrier's Attachment shall be placed, which location shall be designated in a nondiscriminatory manner. Requesting Carrier shall construct each Attachment in conformance with the permit issued by Ameritech for such Attachment. Other than routine maintenance and service wire Attachments, Requesting Carrier shall not modify, supplement or rearrange any Attachment without first obtaining a permit therefor. Requesting Carrier shall provide Ameritech with notice before entering any Structure for construction or maintenance purposes.

**XVI.5 Installation and Maintenance Standards.** Requesting Carrier's Attachments shall be installed and maintained in accordance with the rules, requirements and specifications of the National Electrical Code, National Electrical Safety Code, Bellcore Construction Practices, the FCC, the Commission, the Occupational Safety & Health Act and the valid and lawful rules, requirements and specifications of any other governing authority having jurisdiction over the subject matter.

**XVI.6 Implementation Team.** The Implementation Team shall develop cooperative procedures for implementing the terms of this **Article XVI** and to set out such procedures in the Implementation Plan.

**XVI.7 Access Requests.** Any request by Requesting Carrier for access to Ameritech's Structure shall be in writing and submitted to Ameritech's Structure Access Center. Ameritech may prescribe a reasonable process for orderly administration of such requests. Each Requesting Carrier's Attachment to Ameritech's Structure shall be pursuant to a permit issued by Ameritech for each request for access. The Structure Access Coordinator shall be responsible for processing requests for access to Ameritech's Structure, administration of the process of delivery of access to Ameritech's Structure and for all other matters relating to access to Ameritech's Structure. Requesting Carrier shall provide Ameritech with notice before entering any Ameritech Structure.

**XVI.8 Unused Space.** Except for maintenance ducts as provided in **Section 16.9** and ducts required to be reserved for use by municipalities, all useable but unused space on Structure owned or controlled by Ameritech shall be available for the Attachments of Requesting Carrier, Ameritech or other providers of Telecommunications Services, cable television systems and other persons that are permitted by Applicable Law to attach. Requesting Carrier may not reserve space on Ameritech Structure for its future needs. Ameritech shall not reserve space on Ameritech Structure for the future need of Ameritech nor permit any other person to reserve such space. Notwithstanding the foregoing, Requesting Carrier may provide Ameritech with a two (2)-year rolling forecast of its growth requirements for Structure that will be reviewed jointly on an annual basis.

**XVI.9 Maintenance Ducts.** One duct and one inner-duct in each conduit section shall be kept vacant as maintenance ducts. Maintenance ducts shall be made available to Requesting Carrier for maintenance purposes if it has a corresponding Attachment.

**XVI.10 Applicability.** The provisions of this Agreement shall apply to all Ameritech Structure now occupied by Requesting Carrier.

**XVI.11 Other Arrangements.** Requesting Carrier's use of Ameritech Structure is subject to any valid, lawful and nondiscriminatory arrangements Ameritech may now or hereafter have with others pertaining to the Structure.

**XVI.12 Cost of Certain Modifications.** If Ameritech is required by a governmental entity, court or Commission to move, replace or change the location, alignment or grade of its conduits or poles, each Party shall bear its own expenses of relocating its own equipment and facilities. However, if such alteration is required solely due to Ameritech's negligence in originally installing the Structure, Ameritech shall be responsible for Requesting Carrier's expenses.

**XVI.13 Maps and Records.** Ameritech will provide Requesting Carrier, at Requesting Carrier's request and expense, with access to maps, records and additional information relating to its Structure within the time frames agreed upon by the Implementation Team; provided that Ameritech may redact any Proprietary Information (of Ameritech or third parties) contained or reflected in any such maps, records or additional information before providing access to such information to Requesting Carrier. Upon request, Ameritech will meet with Requesting Carrier to clarify matters relating to maps, records or additional information. Ameritech does not warrant the accuracy or completeness of information on any maps or records. Maps, records and additional information are provided solely for the use by Requesting Carrier and such materials may not be resold, licensed or distributed to any other person.

**XVI.14 Occupancy Permit.** Requesting Carrier occupancy of Structure shall be pursuant to a permit issued by Ameritech for each requested Attachment. Any such permit shall terminate (a) if Requesting Carrier's franchise, consent or other authorization from federal, state, county or municipal entities or private property owners is terminated, (b) if Requesting Carrier has not placed and put into service its Attachments within one hundred eighty (180) days from the date Ameritech has notified Requesting Carrier that such Structure is available for Requesting Carrier's Attachments, (c) if Requesting Carrier ceases to use such Attachment for any period of one hundred eighty (180) consecutive days, (d) if Requesting Carrier fails to comply with a material term or condition of this **Article XVI** and does not correct such noncompliance within sixty (60) days after receipt of notice thereof from Ameritech or (e) if Ameritech ceases to have the right or authority to maintain its Structure, or any part thereof, to which Requesting Carrier has Attachments. If Ameritech ceases to have the right or authority to maintain its Structure, or any part thereof, to which Requesting Carrier has Attachments, Ameritech shall (i) provide Requesting Carrier notice within ten (10) Business Days after Ameritech has knowledge of such fact and (ii) not require Requesting

Carrier to remove its Attachments from such Structure prior to Ameritech's removal of its own attachments. Ameritech will provide Requesting Carrier with at least sixty (60) days' written notice prior to (x) terminating a permit for an Attachment, terminating service to a Requesting Carrier Attachment, or removal of an Attachment, in each case for a breach of the provisions of this **Article XVI**, (y) any increase in the rates for Attachments to Ameritech's Structure permitted by the terms of this Agreement, or (z) any modification to Ameritech's Structure to which Requesting Carrier has an Attachment, other than a modification associated with routine maintenance or as a result of an emergency. If Requesting Carrier surrenders its permit for any reason (including forfeiture under the terms of this Agreement), but fails to remove its Attachments from the Structure within one hundred eighty (180) days after the event requiring Requesting Carrier to so surrender such permit, Ameritech shall remove Requesting Carrier's Attachments at Requesting Carrier's expense. To the extent that Requesting Carrier places an Attachment on Ameritech's Structure without a valid permit, Requesting Carrier shall notify Ameritech immediately of the existence of such Attachment and pay to Ameritech within ten (10) Business Days after the completion of such Attachment an unauthorized Attachment fee equal to five (5) times the annual attachment fee for such unauthorized Attachment.

**XVI.15 Inspections.** Ameritech may make periodic inspections of any part of the Attachments of Requesting Carrier located on Ameritech Structure. Requesting Carrier shall reimburse Ameritech for the costs (as defined in Section 252(d) of the Act) of such inspections. Where reasonably practicable to do so, Ameritech shall provide prior written notice to Requesting Carrier of such inspections.

**XVI.16 Damage to Attachments.** Both Requesting Carrier and Ameritech will exercise precautions to avoid damaging the Attachments of the other or to any Ameritech Structure to which Requesting Carrier obtains access hereunder. Subject to the limitations in **Article XXVI**, the Party damaging the Attachments of the other shall be responsible to the other therefor.

**XVI.17 Charges.** Ameritech's charges for Structure provided hereunder shall be determined in compliance with the regulations to be established by the FCC pursuant to Section 224 of the Act. Prior to the establishment of such rates, the initial charges applicable to Structure hereunder shall be as set forth at Item VIII of the Pricing Schedule. Ameritech reserves the right to adjust the charges for Structure provided hereunder consistent with the foregoing. Notwithstanding the foregoing, Ameritech reserves the right to price on a case-by-case basis any extraordinary Attachment to Structure. An "extraordinary Attachment" is any Attachment to Structure that is not typical of Attachments commonly made to Structure and that impacts the usability of the Structure in excess of a typical Attachment or that presents greater than typical engineering, reliability or safety concerns to other attaching parties or users of the Structure. A deposit shall be required from Requesting Carrier for map preparation, field surveys and Make-Ready Work.

**XVI.18 Nondiscrimination.** Except as otherwise permitted by Applicable Law, access to Ameritech-owned or -controlled Structure under this **Article XVI** shall be provided to Requesting Carrier on a basis that is nondiscriminatory to that which Ameritech provides its Structure to itself, its Affiliates, Customers, or any other person.

## **XVI.19 Interconnection.**

XVI.19.1 Upon request by Requesting Carrier, Ameritech will permit the interconnection of ducts or conduits owned by Requesting Carrier in Ameritech manholes. However, such interconnection in Ameritech manholes will not be permitted where modification of Ameritech's Structure to accommodate Requesting Carrier's request for interconnection is possible.

XVI.19.2 Except where required herein, requests by Requesting Carrier for interconnection of Requesting Carrier's Attachments in or on Ameritech Structure with the Attachments of other attaching parties in or on Ameritech Structure will be considered on a case-by-case basis and permitted or denied based on the applicable standards set forth in this **Article XVI** for reasons of Insufficient Capacity, safety, reliability and engineering. Ameritech will provide a written response to Requesting Carrier's request within forty-five (45) days of Ameritech's receipt of such request.

XVI.19.3 Requesting Carrier shall be responsible for the costs to accommodate any interconnection pursuant to this **Section 16.19**.

**XVI.20 Cost Imputation.** Ameritech will impute costs consistent with the rules under Section 224(g) of the Act.

**XVI.21 Structure Access Center.** Requests for access to Ameritech Structure shall be made through Ameritech's Structure Access Center, which shall be Requesting Carrier's single point of contact for all matters relating to Requesting Carrier's access to Ameritech's Structure. The Structure Access Center shall be responsible for processing requests for access to Ameritech's Structure, administration of the process of delivery of access to Ameritech's Structure and for all other matters relating to access to Ameritech's Structure.

**XVI.22 State Regulation.** The terms and conditions in this **Article XVI** shall be modified through negotiation between the Parties to comply with the regulations of the state in which Ameritech owns or controls Structure to which Requesting Carrier seeks access if such state meets the requirements of Section 224(c) of the Act for regulating rates, terms and conditions for pole attachments and so certifies to the FCC under Section 224(c) of the Act and the applicable FCC rules pertaining thereto. Until the terms and conditions of this **Article XVI** are renegotiated, the rules, regulations and orders of such state so certifying shall supersede any provision herein inconsistent therewith.

**XVI.23 Abandonments, Sales or Dispositions.** Ameritech shall notify Requesting Carrier of the proposed abandonment, sale, or other intended disposition of any Structure. In the event of a sale or other disposition of the conduit system or pole, Ameritech shall condition the sale or other disposition to include and incorporate the rights granted to Requesting Carrier hereunder.

## ARTICLE XVII REFERRAL ANNOUNCEMENT

When a Customer changes its service provider from Ameritech to Requesting Carrier, or from Requesting Carrier to Ameritech, and does not retain its original telephone number, the Party formerly providing service to such Customer shall provide a referral announcement ("**Referral Announcement**") on the abandoned telephone number which provides details on the Customer's new number. Referral Announcements shall be provided reciprocally, free of charge to both the other Party and the Customer, for a period of four (4) months after the date the Customer changes its telephone number in the case of business Customers and sixty (60) days after the date the Customer changes its telephone number in the case of residential Customers. However, if either Party provides Referral Announcements for a period different (either shorter or longer) than the above respective periods when its Customers change their telephone numbers, such Party shall provide the same level of service to Customers of the other Party.

## ARTICLE XVIII IMPLEMENTATION TEAM AND IMPLEMENTATION PLAN

**XVIII.1 Implementation Team.** The Parties understand that the arrangements and provision of services described in this Agreement shall require technical and operational coordination between the Parties. The Parties further agree that it is not feasible for this Agreement to set forth each of the applicable and necessary procedures, guidelines, specifications and standards that will promote the Parties' provision of Telecommunications Services to their respective Customers. Accordingly, the Parties agree to form a team (the "**Implementation Team**") which shall develop and identify those processes, guidelines, specifications, standards and additional terms and conditions necessary for the provision of the services and the specific implementation of each Party's obligations hereunder. Within five (5) days after the Effective Date, each Party shall designate, in writing, its representative on the Implementation Team; provided that either Party may include in meetings or activities such technical specialists or other individuals as may be reasonably required to address a specific task, matter or subject. Each Party may replace its representative on the Implementation Team by delivering written notice thereof to the other Party.

**XVIII.2 Interconnection Maintenance and Administration Plan.** Within ninety (90) days after the Effective Date, or, as agreed upon by the Parties, by the date which is not less than sixty (60) days prior to the first Interconnection Activation Date hereunder, Requesting Carrier and Ameritech shall have jointly developed a plan (the "**Plan**") which shall define and detail:

- (a) standards to ensure that the Interconnection trunk groups provided for herein experience a grade of service, availability and quality in accordance with all appropriate relevant industry-accepted quality, reliability and availability standards and in accordance with the levels identified in Section 3.6;

- (b) the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the Interconnections (including signaling) specified in **Article III** and the trunk groups specified in **Articles IV** and **V**, including standards and procedures for notification and discoveries of trunk disconnects;
- (c) disaster recovery and escalation provisions; and
- (d) such other matters as the Parties may agree.

**XVIII.3 Implementation Plan.** Within ninety (90) days after the Approval Date, or such other date as agreed upon by the Parties, the Implementation Team shall reach agreements on items to be included in an operations manual (the "**Implementation Plan**"), which shall include (i) processes and procedures to implement the terms and conditions set forth herein, (ii) documentation of the various items described in this Agreement which are to be included in the Implementation Plan, including the following matters, and (iii) any other matters agreed upon by the Implementation Team:

- (1) A Plan as provided in **Section 18.2**;
- (2) Access to all necessary OSS functions, including interfaces and gateways;
- (3) Escalation procedures for provisioning and maintenance;
- (4) Single points of contact for provisioning and maintenance;
- (5) Service ordering and provisioning procedures, including provision of the trunks and facilities;
- (6) Provisioning and maintenance support;
- (7) Procedures and processes for Directories and Directory Listings;
- (8) Service referral procedures;
- (9) Training and the charges associated therewith;
- (10) Billing;
- (11) Network planning components, including system architecture, planning SONET equipment configuration, fiber hand-off, test and acceptance of SONET ring, trunking, signaling, and augment process; and

- (12) Guidelines for administering access to Rights-of-way, poles and conduits of Ameritech.

**XVIII.4 Action of Implementation Team.** The Implementation Plan may be amended from time to time by the Implementation Team as the team deems appropriate. Unanimous written consent of the permanent members of the Implementation Team shall be required for any action of the Implementation Team. If the Implementation Team is unable to act, the existing provisions of the Implementation Plan shall remain in full force and effect.

**XVIII.5 Further Coordination and Performance.** Except as otherwise agreed upon by the Parties, on a mutually agreed-upon day and time once a month during the Term, the Implementation Team shall discuss the performance of the Parties under this Agreement. At each such monthly meeting the Parties will discuss: (i) the administration and maintenance of the Interconnections and trunk groups provisioned under this Agreement; (ii) the Parties' provisioning of the services provided under this Agreement; (iii) the Parties' compliance with the Performance Benchmarks set forth in this Agreement and any areas in which such performance may be improved; (iv) any problems that were encountered during the preceding month or anticipated in the upcoming month; (v) the reason underlying any such problem and the effect, if any, that such problem had, has or may have on the performance of the Parties; and (vi) the specific steps taken or proposed to be taken to remedy such problem. In addition to the foregoing, the Parties through their representative on the Implementation Team or such other appropriate representatives will meet to discuss any matters that relate to the performance of this Agreement, as may be requested from time to time by either of the Parties.

**XVIII.6 Operational Review.** Representatives of Requesting Carrier and Ameritech will meet on a quarterly basis, beginning with the end of the first complete quarter following the date on which the Parties first provision services under this Agreement, to determine that the service cycle of pre-ordering, ordering, provisioning, maintenance and billing categories are addressed, including the following:

- (a) Interfaces and processes are operational and, consistent with the forecast provided under Section 19.5.2, the orders of Requesting Carrier Customers for Resale Services are successfully completed;
- (b) When applicable, interfaces and processes are operational and, consistent with the forecast provided under Section 19.5.2, the orders for unbundled Loops are successfully completed;
- (c) Review of all agreed-upon performance standards; and
- (d) Requesting Carrier's use of all functions available from the Provisioning EI and Maintenance EI.

## **ARTICLE XIX**

### **GENERAL RESPONSIBILITIES OF THE PARTIES**

**XIX.1 Compliance with Implementation Schedule.** Each of Ameritech and Requesting Carrier shall use its best efforts to comply with the Implementation Schedule set forth on Schedule 2.1.

**XIX.2 Compliance with Applicable Law.** Each Party shall comply at its own expense with all applicable federal, state, and local statutes, laws, rules, regulations, codes, final and nonappealable orders, decisions, injunctions, judgments, awards and decrees (collectively, "**Applicable Law**") that relate to its obligations under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.

**XIX.3 Necessary Approvals.** Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

**XIX.4 Environmental Hazards.** Each Party will be solely responsible at its own expense for the proper handling, storage, transport, treatment, disposal and use of all Hazardous Substances by such Party and its contractors and agents. "**Hazardous Substances**" includes those substances (i) included within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste or pollutant or contaminant under any Applicable Law and (ii) listed by any governmental agency as a hazardous substance.

#### **XIX.5 Forecasting Requirements.**

**XIX.5.1** The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all Customers in their respective designated service areas.

**XIX.5.2** Thirty (30) days after the Effective Date and each month during the term of this Agreement, each Party shall provide the other Party with a rolling, six (6) calendar-month, nonbinding forecast of its traffic and volume requirements for the Interconnection, unbundled Network Elements and Resale Services (notwithstanding that Requesting Carrier may also be submitting binding forecasts pursuant to Section 10.13.2(b)) to be provided under this Agreement, in the form and in such detail as requested by Ameritech. If a Party becomes aware of any



information or fact that may render its previously submitted forecast inaccurate by more than five percent (5%), such Party agrees to immediately notify the other Party of such fact or information and provide to such other Party a revised forecast that reflects such new fact or information and cures any inaccuracy in the previously submitted forecast within the earlier of (i) five (5) calendar days after such Party becomes aware of such information or fact and (ii) ten (10) Business Days before such Party submits any order to the other Party as a result of such new information or fact. In addition, each Party agrees to cooperate with the other Party to ensure that any orders that are submitted as a result of any new information or fact are submitted and processed consistent with the terms and conditions of this Agreement. Notwithstanding Section 20.1.1, the Parties agree that each forecast provided under this Section 19.5.2 shall be deemed "**Proprietary Information**" under Article XX.

XIX.5.3 In addition to, and not in lieu of, the nonbinding forecasts required by Section 19.5.2, a Party that is required pursuant to this Agreement to provide a forecast (the "**Forecast Provider**") or a Party that is entitled pursuant to this Agreement to receive a forecast (the "**Forecast Recipient**") with respect to traffic and volume requirements for the services and Network Elements provided under this Agreement may request that the other Party enter into negotiations to establish a forecast (a "**Binding Forecast**") that commits such Forecast Provider to purchase, and such Forecast Recipient to provide, a specified volume to be utilized as set forth in such Binding Forecast. The Forecast Provider and Forecast Recipient shall negotiate the terms of such Binding Forecast in good faith and shall include in such Binding Forecast provisions regarding price, quantity, liability for failure to perform under a Binding Forecast and any other terms desired by such Forecast Provider and Forecast Recipient. Notwithstanding Section 20.1.1, the Parties agree that each forecast provided under this Section 19.5.3 shall be deemed "**Proprietary Information**" under Article XX.

**XIX.6 Certain Network Facilities.** Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network using industry standard format and to terminate the traffic it receives in that standard format to the proper address on its network. Such facility shall be designed based upon the description and forecasts provided under Sections 19.5.1, 19.5.2 and, if applicable, 19.5.3. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan.

#### **XIX.7 Traffic Management and Network Harm.**

XIX.7.1 Each Party may use protective network traffic management controls, such as 7-digit and 10-digit code gaps on traffic toward the other Party's network, when required to protect the public-switched network from congestion due to facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.

**XIX.7.2** Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.

**XIX.7.3** The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes, to prevent or mitigate the impact of these events on the public-switched network.

**XIX.7.4** Neither Party shall use any product or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with any person in the use of such person's Telecommunications Service, prevents any person from using its Telecommunications Service, impairs the quality of Telecommunications Service to other carriers or to either Party's Customers, causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment.

**XIX.8 Insurance.** At all times during the term of this Agreement, each Party shall keep and maintain in force at such Party's expense all insurance required by Applicable Law, general liability insurance in the amount of at least \$10,000,000 and worker's compensation insurance. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self-insurance).

**XIX.9 Labor Relations.** Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.

**XIX.10 Good Faith Performance.** Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement, as the case may be.

**XIX.11 Responsibility to Customers.** Each Party is solely responsible to its Customers for the services it provides to such Customers.

**XIX.12 Unnecessary Facilities.** No Party shall construct facilities which require another Party to build unnecessary trunks, facilities or services.

**XIX.13 Cooperation.** The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

**XIX.14 NXX Code Administration.** Each Party is responsible for administering NXX codes assigned to it.

**XIX.15 LERG Listings.** Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches.

**XIX.16 LERG Use.** Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore for maintaining the LERG in a timely manner.

**XIX.17 Switch Programming.** Each Party shall program and update its own Central Office Switches and End Office Switches and network systems to recognize and route traffic to and from the other Party's assigned NXX codes. Except as mutually agreed or as otherwise expressly defined in this Agreement, neither Party shall impose any fees or charges on the other Party for such activities.

**XIX.18 Transport Facilities.** Each Party is responsible for obtaining transport facilities sufficient to handle traffic between its network and the other Party's network. Each Party may provide the facilities itself, order them through a third party, or order them from the other Party.

## **ARTICLE XX PROPRIETARY INFORMATION**

### **XX.1 Definition of Proprietary Information.**

**XX.1.1 "Proprietary Information"** means:

- (a) all proprietary or confidential information of a Party (a "**Disclosing Party**") including specifications, drawings, sketches, business information, forecasts, records (including each Party's records regarding Performance Benchmarks), Customer Proprietary Network Information, Customer Usage Data, audit information, models, samples, data, system interfaces, computer programs and other software and documentation that is furnished or made available or otherwise disclosed to the other Party or any of such other Party's Affiliates (individually and collectively, a "**Receiving Party**") pursuant to this Agreement and, if written, is marked "Confidential" or "Proprietary" or by other similar notice or if oral or visual, is either identified as "Confidential" or "Proprietary" at the time of disclosure or is summarized in a writing so identified and delivered to the Receiving Party within ten (10) days of such disclosure; and

- (b) any portion of any notes, analyses, data, compilations, studies, interpretations or other documents prepared by any Receiving Party to the extent the same contain, reflect, are derived from, or are based upon, any of the information described in subsection (a) above, unless such information contained or reflected in such notes, analyses, etc. is so commingled with the Receiving Party's information that disclosure could not possibly disclose the underlying proprietary or confidential information (such portions of such notes, analyses, etc. referred to herein as **"Derivative Information"**).

XX.1.2 The Disclosing Party will use its reasonable efforts to follow its customary practices regarding the marking of tangible Proprietary Information as "confidential," "proprietary," or other similar designation. The Parties agree that the designation in writing by the Disclosing Party that information is confidential or proprietary shall create a presumption that such information is confidential or proprietary to the extent such designation is reasonable.

XX.1.3 Notwithstanding the requirements of this Article XX, all information relating to the Customers of a Party, including information that would constitute Customer Proprietary Network Information of a Party pursuant to the Act and FCC rules and regulations, and Customer Usage Data, whether disclosed by one Party to the other Party or otherwise acquired by a Party in the course of the performance of this Agreement, shall be deemed **"Proprietary Information."**

## **XX.2 Disclosure and Use.**

XX.2.1 Each Receiving Party agrees that from and after the Effective Date:

- (a) all Proprietary Information communicated, whether before, on or after the Effective Date, to it or any of its contractors, consultants or agents (**"Representatives"**) in connection with this Agreement shall be held in confidence to the same extent as such Receiving Party holds its own confidential information; provided that such Receiving Party or Representative shall not use less than a reasonable standard of care in maintaining the confidentiality of such information;
- (b) it will not, and it will not permit any of its employees, Affiliates or Representatives to disclose such Proprietary Information to any third person;
- (c) it will disclose Proprietary Information only to those of its employees, Affiliates and Representatives who have a need for it in connection with the use or provision of services required to fulfill this Agreement; and
- (d) it will, and will cause each of its employees, Affiliates and Representatives to use such Proprietary Information only to perform its obligations under this

Agreement or to use services provided by the Disclosing Party hereunder and for no other purpose, including its own marketing purposes.

XX.2.2A Receiving Party may disclose Proprietary Information of a Disclosing Party to its Representatives who need to know such information to perform their obligations under this Agreement; provided that before disclosing any Proprietary Information to any Representative, such Party shall notify such Representative of such person's obligation to comply with this Agreement. Any Receiving Party so disclosing Proprietary Information shall be responsible for any breach of this Agreement by any of its Representatives and such Receiving Party agrees, at its sole expense, to use its reasonable efforts (including court proceedings) to restrain its Representatives from any prohibited or unauthorized disclosure or use of the Proprietary Information. Each Receiving Party making such disclosure shall notify the Disclosing Party as soon as possible if it has knowledge of a breach of this Agreement in any material respect. A Disclosing Party shall not disclose Proprietary Information directly to a Representative of the Receiving Party without the prior written authorization of the Receiving Party.

XX.2.3 Proprietary Information shall not be reproduced by any Receiving Party in any form except to the extent (i) necessary to comply with the provisions of **Section 20.3** and (ii) reasonably necessary to perform its obligations under this Agreement. All such reproductions shall bear the same copyright and proprietary rights notices as are contained in or on the original.

XX.2.4 This **Section 20.2** shall not apply to any Proprietary Information which the Receiving Party can establish to have:

- (a) been disclosed by the Receiving Party with the Disclosing Party's prior written consent;
- (b) become generally available to the public other than as a result of disclosure by a Receiving Party;
- (c) been independently developed by a Receiving Party by an individual who has not had knowledge of or direct or indirect access to such Proprietary Information;
- (d) been rightfully obtained by the Receiving Party from a third person without knowledge that such third person is obligated to protect its confidentiality; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such third person has any such obligation; or
- (e) been obligated to be produced or disclosed by Applicable Law; provided that such production or disclosure shall have been made in accordance with **Section 20.3**.

### **XX.3 Government Disclosure.**

XX.3.1 If a Receiving Party desires to disclose or provide to the Commission, the FCC or any other governmental authority any Proprietary Information of the Disclosing Party, such Receiving Party shall, prior to and as a condition of such disclosure, (i) provide the Disclosing Party with written notice and the form of such proposed disclosure as soon as possible but in any event early enough to allow the Disclosing Party to protect its interests in the Proprietary Information to be disclosed and (ii) attempt to obtain in accordance with the applicable procedures of the intended recipient of such Proprietary Information an order, appropriate protective relief or other reliable assurance that confidential treatment shall be accorded to such Proprietary Information.

XX.3.2 If a Receiving Party is required by any governmental authority or by Applicable Law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Proprietary Information, the Disclosing Party, at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the Receiving Party's compliance with this **Section 20.3** with respect to all or part of such requirement.

XX.3.3 The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to seek pursuant to this **Section 20.3**. In the absence of such relief, if the Receiving Party is legally compelled to disclose any Proprietary Information, then the Receiving Party shall exercise all commercially reasonable efforts to preserve the confidentiality of the Proprietary Information, including cooperating with the Disclosing Party to obtain an appropriate order or other reliable assurance that confidential treatment will be accorded the Proprietary Information.

### **XX.4 Ownership.**

XX.4.1 All Proprietary Information, other than Derivative Information, shall remain the property of the Disclosing Party, and all documents or other tangible media delivered to the Receiving Party that embody such Proprietary Information shall be, at the option of the Disclosing Party, either promptly returned to Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Proprietary Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

XX.4.2 At the request of the Disclosing Party, any Derivative Information shall be, at the option of the Receiving Party, either promptly returned to the Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Derivative Information will continue to be subject to this Agreement), upon the

earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

XX.4.3 The Receiving Party may at any time either return the Proprietary Information to the Disclosing Party or destroy such Proprietary Information. If the Receiving Party elects to destroy Proprietary Information, all copies of such information shall be destroyed and upon the written request of the Disclosing Party, the Receiving Party shall provide to the Disclosing Party written certification of such destruction. The destruction or return of Proprietary Information shall not relieve any Receiving Party of its obligation to treat such Proprietary Information in the manner required by this Agreement.

## **ARTICLE XXI TERM AND TERMINATION**

**XXI.1 Term.** The initial term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until August 17, 2001 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically be renewed for additional one (1)-year periods (each, a "**Renewal Term**"; "**Renewal Term**" and "**Initial Term**" sometimes collectively referred to herein as the "**Term**") unless a Party delivers to the other Party written notice of termination of this Agreement at least one hundred twenty (120) days prior to the expiration of the Initial Term or a Renewal Term.

**XXI.2 Renegotiation of Certain Terms.** Notwithstanding anything to the contrary in Section 21.1, upon delivery of written notice at least one hundred twenty (120) days prior to the expiration of the Initial Term or any Renewal Term, either Party may require negotiations of the rates, prices and charges, terms, and conditions of the services to be provided under this Agreement effective upon such expiration. If the Parties are unable to satisfactorily negotiate such new rates, prices, charges and terms within ninety (90) days of such written notice, either Party may petition the Commission or take such other action as may be necessary to establish appropriate terms. If prior to the applicable expiration date, the Parties are unable to mutually agree on such new rates, prices, charges, terms and conditions or the Commission does not issue its order, the Parties agree that the rates, terms and conditions ultimately ordered by such Commission or negotiated by the Parties shall be effective retroactive to such expiration date.

**XXI.3 Default.** When a Party believes that the other Party is in violation of a material term or condition of this Agreement ("**Defaulting Party**"), it shall provide written notice to such Defaulting Party of such violation prior to commencing the dispute resolution procedures set forth in Section 28.3 and it shall be resolved in accordance with the procedures established in Section 28.3.

**XXI.4 Payment Upon Expiration or Termination.** In the case of the expiration or termination of this Agreement for any reason, each of the Parties shall be entitled to payment for all

services performed and expenses accrued or incurred in accordance with the terms of this Agreement or approved by the other Party prior to such expiration or termination.

## **ARTICLE XXII DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE.

## **ARTICLE XXIII CANCELLATION CHARGES**

Except as provided in **Sections 9.1.3** and **19.5.3**, pursuant to a Bona Fide Request or as otherwise provided in any applicable tariff or contract referenced herein, cancellation charges shall not be imposed upon, or payable by, either Party.

## **ARTICLE XXIV SEVERABILITY**

If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.